IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LITTLE ROCK SCHOOL DISTRICT, ***et al.*** **PLAINTIFFS**

v. **No. 4:82-cv-866-DPM**

NORTH LITTLE ROCK SCHOOL DISTRICT, ***et al.*** **DEFENDANTS**

LORENE JOSHUA, ***et al.*** **INTERVENORS**

ORDER

1. When the State of Arkansas, the Little Rock School District, the North Little Rock School District, the Pulaski County Special School District, the Joshua Intervenors, and the Knight Intervenors proposed a settlement of Arkansas's obligations in this case in November 2013, the parties' agreement provided for some attorney's fees. The section about fees is in the margin.* The Court approved the parties' settlement as fair, reasonable, and adequate, and, in due course, entered a Consent Judgment. *№ 5063.* The attorney's fees

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*LRSD, NLRSD, and PCSSD shall each receive $250,000 for reimbursement of legal fees within ninety days of this Agreement being approved by the District Court. The State stipulates that Joshua Intervenors and the Knight Intervenors are prevailing parties as to the State with regard to certain motions filed subsequent to the 1989 Settlement Agreement that Joshua joined and which were successful against the State and are entitled to reasonable attorney's fees, in the amount of $500,000 for the Joshua Intervenors and in the amount of $75,000 for the Knight Intervenors unless contested, in which event the Court may award a reasonable fee unless otherwise agreed upon.

for the three districts and the Knight Intervenors have been resolved without dispute insofar as the Court knows. The Joshua Intervenors and the State, though, have fallen out. The $500,000 presumptive fee in the settlement is no longer agreed. Joshua seeks approximately $3,300,000 for case-related work during the past twenty-two years involving the State's acts and omissions. That request reflects approximately $1,900,000 for time spent, plus an approximately $1,400,000 enhancement for exceptional work. The State responds that, for various reasons, approximately $64,000, or no more than the tentatively agreed $500,000, is the right number. Based on the record and the governing law, the Court awards the Joshua Intervenors a reasonable attorney's fee of $785,355. The particulars are in a chart appended to this Order.

2. Three preliminary points. The first two arise from applying the settled Arkansas law about unambiguous contracts. *Artman v. Hoy*, 370 Ark. 131, 136, 257 S.W.3d 864, 869 (2007). The third is an uncontested point of federal law.

First, Joshua is a prevailing party entitled to a reasonable fee. The parties agreed to this status in their 1989 Settlement Agreement. "Joshua is

a prevailing party for purposes of relief." *№ 4440–3, at 22, LRSD Ex. 3, 1989 Settlement Agreement at § V.* The parties came to a similar agreement in 2013, which they clearly expressed. "The State stipulate[d]" that Joshua prevailed "with regard to certain motions filed subsequent to the 1989 Settlement Agreement that Joshua joined and which were successful against the State and are entitled to reasonable attorney's fees . . .." *№ 5063* at Exhibit 1, § (c)(9). The State can contest the extent and reasonableness of Joshua's work—which motions, for example? And how much monitoring was needed against the State? But Joshua is correct: the State may not walk back Joshua's prevailing-party status.

Second, the presumptive amount—$500,000—was a placeholder to avoid any conflict of interest when the parties settled their differences. This amount was the tentative fee for Joshua, subject to an "if contested" exception. If the amount was contested, then the parties could do one of two things: agree to another amount or submit the issue to this Court. The amount is contested; the parties haven't agreed to a different figure; and so this Court must decide. This is what the parties plainly agreed. *Hoy*, 370 Ark. at 136, 257 S.W.3d at 869. The Court's exchanges with counsel at one of the hearings,

№ 5030-1 at 20-22, confirm the parties' clear and controlling words.

Third, the governing statute is 42 U.S.C. § 1988(b). The question is what amount is "reasonable compensation, in light of all the circumstances, for the time and effort expended by" the Joshua Intervenors' lawyers in matters involving the State. *Blanchard v. Bergerson*, 489 U.S. 87, 93 (1989). The law requires "no more, no less." *Ibid*; *see generally, Hensley v. Eckerhart*, 461 U.S. 424, 433–34 (1983) and *Little Rock School District v. Pulaski County Special School District*, 921 F.3d 1371, 1383, 1390–93 (8th Cir. 1990). The State and the Joshua Intervenors agree on this federal law.

3. Hourly Rates. The reasonable hourly rates for Joshua's work are important in the overall award, *Hensley*, 461 U.S. at 433, and a good starting point. Those rates are contested. Joshua points to the rates recently approved by the Court of Appeals, arguing that they're law of the case. *Little Rock School District v. Arkansas*, 674 F.3d 990, 997–99 (8th Cir. 2012). The State makes a two-fold response. The rates for Mr. Walker, Mr. Pressman, and the paralegals in the last appeal were, the State says, essentially undisputed because the real fight was about other lawyers' work. In any event, the State continues, it would be unreasonable to apply these rates to work going back

two decades. Joshua replies that the time lag actually justifies the higher rates because its lawyers have waited so long for payment.

Both sides are partly right. The Court of Appeals' decision establishes reasonable rates for recent work – the appellate proceedings lasted from mid-2010 until early 2012. It would be unreasonable, nonetheless, to use those rates for all of Joshua's State-related work since 1993. For example, as the State points out, this Court approved $200/hour for Mr. Walker in 1996. *№ 2821 at 9, note 6*. That's half the $400/hour approved in 2012 by the Court of Appeals. The delay in payment must be considered. It's part of establishing a reasonable fee overall. *Missouri v. Jenkins*, 491 U.S. 274, 282–83 (1989). But an award for all work at current hourly rates would overstate compensation for waiting.

The Court approves these hourly rates:

Mr. Walker	–	$325
Mr. Pressman	–	$275
Mr. Porter	–	$250
Ms. Springer	–	$90
Ms. Jackson	–	$60

These rates reflect all the material circumstances: counsels' experience and expertise; the kind of work done; the delay in payment; the local market rates for lawyers and paralegals; the lack of any separate claim for out-of-pocket expenses; and the change in rates over the last two decades. The Court concludes that using one amount for each person best captures all these variables. The numbers are necessarily inexact; they somewhat overstate the rate for work in years' past, while somewhat understating it for recent work. This imprecision, though, accomplishes two things. It avoids the needless complexity of applying several rates. And it provides a reasonable rate for each person. In a word, the imprecision is equitable.

4. Work Done. Joshua seeks fees for work done involving the State since 1993 in six areas: early litigation about State monitoring; the 1994 litigation about loss funding and worker's compensation; opposing a Jacksonville splinter district in 2003; opposing PCSSD's request for unitary status in 2007-2011; getting ready for trial on the State's motion for release, negotiating the recent settlement, and getting it approved—all in 2013-2014; and monitoring compliance with the 1989 Settlement Agreement, particularly on inter-district magnet schools and Majority-to-Minority transfers. The State

objects in many ways, large and small.

There's a record-keeping issue. Contemporaneous time records are not required for a § 1988(b) fee award, but they make fee-related disputes much clearer. *MacDissi v. Valmont Industries, Inc.*, 856 F.2d 1054, 1061 (8th Cir. 1988). Joshua has the burden of documenting what overall fee is reasonable. *Hensley*, 461 U.S. at 437. Mr. Pressman and Mr. Porter kept good time records contemporaneously; Mr. Pressman's records are particularly careful. Their work was almost exclusively litigation-related. And their records give the Court a clear understanding of what they did when. Mr. Walker, Ms. Springer, and Ms. Jackson didn't keep contemporaneous records of their work. Their request is based on best estimates and a good-faith effort to reconstruct what they did. The State has dissected these estimates and reconstructions, especially Ms. Springer's.

The overarching question is how much time Joshua's lawyers reasonably expended on State-related work. *Hensley*, 461 U.S. at 433. The Court's evaluation must be area by area, as well as person by person within each area.

• Arkansas's Monitoring Obligation

The parties' 1989 settlement obligated the State to be an independent monitor of the parties' efforts to remedy achievement disparities. *№ 4440–3 at 13, LRSD Ex. 3, 1989 Settlement Agreement at § III(A).* As the parties' recent briefs describe, there was litigation in the 1990s about what the Department of Education was and was not doing. Joshua won some of these rounds and lost some. Eventually, Joshua did much monitoring itself—another area for which it seeks fees. And the lack of State monitoring was one of the main reasons Joshua opposed the State's motion for release, *e.g., № 4809 at 4–5,* which illustrates the perennial nature of this disputed area.

The Court awards reasonable fees for monitoring-related litigation. Joshua was trying to implement the agreed remedy. It didn't achieve total victory, but it won some battles. Under precedent, these efforts are compensable because they were inextricably intertwined with the remedy, "useful and of a type ordinarily necessary" in securing desegregation. *Jenkins v. State of Missouri*, 127 F.3d 709, 716–19 (8th Cir. 1997) (internal quotation omitted). The Court discounts the time requested by approximately 50%, though, because Joshua's success was limited. The Court approves 110 hours

for Mr. Walker, 11 hours for Mr. Pressman, and 150 hours for Ms. Springer's paralegal work.

• Loss Funding/ Worker's Compensation Litigation

The details of this area are explained in the Court of Appeals' decision siding mostly with the districts, the Knight Intervenors, and Joshua against the State. *Little Rock School District v. Pulaski County Special School District, No. 1*, 83 F.3d 1013, 1016 (8th Cir. 1996). The Court rejects the State's various arguments against fees for this work. Yes, the districts and the Knight Intervenors took the lead. But Joshua joined forces with them and participated fully. The upshot was that the State, through various means, effectively reduced other funding for the three central Arkansas districts that were getting substantial desegregation funds. Yes, Joshua could have, as the State says, sought fees for this work sooner. But the recent settlement agreement waived any waiver; this is a clear example of an area where Joshua (and others) prevailed on a contested motion against the State. Finally, the State's argument from *Burks v. Siemens Energy & Automation, Inc.*, 215 F.3d 880 (8th Cir. 2000) is misplaced. Mr. Walker's good-faith estimate and time reconstruction is based on a comparison with the fees awarded to the districts'

lawyers. They were, in effect, co-counsel on these issues. This is apples-to-apples, not the apples-to-oranges comparison with opposing counsel that the *Burks* Court rejected. 215 F.3d at 884. The Court approves the 170 hours requested for Mr. Walker and 40 hours for Ms. Springer. The amount for Ms. Springer is adjusted downward from the request because of record-keeping problems, which are discussed below.

• Jacksonville Splinter Litigation

The 1989 Settlement Agreement fixed the boundaries of the three central Arkansas school districts. *№ 4440–3 at 9, LRSD Ex. 3, 1989 Settlement Agreement at § II(J).* In the mid-1990s, the State Board of Education, against the Attorney General's advice, authorized an election about creating a Jacksonville district from part of the Pulaski County Special School District. Joshua joined PCSSD's effort to stop the detachment election. This Court did so, enforcing the parties' "no new district lines" understanding. The State acknowledges that Joshua is entitled to some fees for this work, but contests how much, pointing to the few docket filings by Joshua.

Joshua's Jacksonville-related work went to the remedy's core. Without firm district lines, the inter-district remedy would have unraveled. The Court

agrees that Joshua's opposition was critical, perhaps even outcome determinative, in the Jacksonville splinter litigation. The parties' recent settlement agreement makes this point: it allowed, with Joshua's approval, the State to move forward with an election on detachment; the settlement let the citizens of Jacksonville and North Pulaski County fulfill their long-standing desire to have their own school district. *№ 5063 at 8*. Mr. Walker's good-faith reconstruction of his time, partly by comparison with fees awarded to PCSSD against the State, is valid and informative. Again, there's no *Burks* problem because the lawyers for PCSSD and Joshua were aligned, not opposed. 215 F.3d at 884. While Joshua's filings on the docket were thin, as the State says, the nature of this dispute necessarily meant that much of Joshua's work was in various formal and informal meetings. The Court approves the 225 hours requested for Mr. Walker's work, in court and out. The Court also approves 20 hours for Ms. Springer on this area.

• PCSSD Unitary Status Litigation

Joshua seeks fees from the State for work done by Mr. Walker, Mr. Pressman, and Mr. Porter in opposing PCSSD's mostly unsuccessful push for unitary status several years ago. *LRSD v. PCSSD*, 2011 WL 1935332 (E.D. Ark.

19 May 2011). Joshua also seeks time for Ms. Springer's paralegal support. Joshua says that, in the circumstances, it's entitled to one third of its fees. The reduced request reflects the State's supporting, but important, role here. The State responds "not me"—PCSSD was the opposing and thus responsible party. The State points out that Joshua and PCSSD settled this attorney's-fee issue in 2012 for $875,000. *№ 4807.* That compromise, of course, was only with the district. Joshua counters with the Kansas City cases: fees may be assessed against a constitutional violator (here, the State), who supports another party (here, PCSSD) who is litigating against the remedy secured. *Jenkins v. State of Missouri*, 967 F.2d 1248, 1250–51 (8th Cir. 1992); *see also Jenkins v. State of Missouri*, 73 F.3d 201, 204–05 (8th Cir. 1996).

Joshua is entitled to some fees for this work. First, precedent authorizes an award in these circumstances. *Jenkins*, 967 F.2d at 1250–51. The State is mistaken: the Court of Appeals did not abandon *Jenkins*'s holding when the Court rejected some of Joshua's fee request in the tangled-party situation presented by the recent appeal. *Compare LRSD*, 674 F.3d at 996. Second, the equities favor some fees. The State strongly encouraged PCSSD to seek unitary status when it was obviously premature to do so. The State's support

came in four main ways: incentives in Act 395 of 2007 (attorney's fees available if unitary status sought by deadline and achieved); commissioning the Gordon Report (PCSSD and other districts are unitary); providing two experts used by PCSSD at trial (Armor and Rossell); and participating at trial in support of PCSSD. If the State and PCSSD were not quite arm-in-arm, as Joshua describes them, the State certainly was right behind the district, nudging it forward.

Joshua's request for reduced fees is right in principle, but one-third of the time spent is still too much given all the facts. Remember the $875,000 Joshua has already gotten from PCSSD. And the State was concededly an encourager, not the leader. Mr. Walker's reconstruction of his time by comparison with Mr. Pressman's and Mr. Porter's work is acceptable under *Burks*; the comparison with PCSSD's lawyer's fees is not. All material circumstances considered, the Court awards Joshua 20% of its PCSSD-related fees. That equals 110 hours for Mr. Walker, 98 hours for Mr. Pressman, 32 hours for Mr. Porter, and 56 hours for Ms. Springer.

• State's Motion for Release/2014 Settlement

Joshua's time here was not only reasonable, it was essential. When the

State sought to stop all State desegregation funding immediately, Joshua understandably defended the remedy and went on offense, too, arguing how the State had failed to follow through on the 1989 agreement with anything but money. In this effort, Joshua and LRSD were arm-in-arm. The Court set two weeks for trial. There was much discovery and motion practice. Then, in the last months before trial, with leadership from the Attorney General, all the parties began serious settlement discussions. And the settlement was made. This Court endorsed and approved the parties' compromise after the appropriate notice and a fairness hearing.

With some marginal reductions, the Court approves Joshua's requested fees. They're reasonable and appropriate given all the effort, both in defending the remedy and in seeking the compromise. *Buckhannon Board and Care Home, Inc., v. West Virginia Department of Health and Human Resources, et al.*, 532 U.S. 598, 600-05 (2001). The Court rejects the State's argument that Joshua's involvement in settlement efforts before 2014 are not compensable. This field had to be plowed. Repeatedly. The State is correct, however, that *Burks* prevents Mr. Walker from using an opposing party's attorney's fees, here LRSD's, as a reliable benchmark. 215 F.3d at 884. His comparison with

Mr. Pressman's work is solid. The Court reduces Mr. Walker's reconstructed time by approximately 10% to account for some excess and some duplication that has crept into his estimate. The Court approves 335 hours for Mr. Walker's time reasonably spent. The Court likewise reduces Mr. Pressman's time—which was scrupulously recorded, and then put in final form for the fee motion—by approximately 10% to eliminate some duplication. The Court specifically rejects the State's arguments that Mr. Pressman spent too much time on various tasks. The Court approves 250 hours for Mr. Pressman here. Finally, the Court approves 270 hours for Ms. Springer's paralegal time.

• Monitoring

A reasonable fee for monitoring the State is, for various reasons, a tangled issue.

The request: Mr. Walker's "conservative, good-faith estimate" is that he's spent about two hours a week during each school year since 1993 on this aspect of the case. *№ 5031–2 at 18.* He worked "receiving the State's monitoring reports, conferring with and supervising Ms. Springer [, his paralegal and Joshua's primary monitor,] on State-related matters, meeting with State officials, communicating with class members regarding the magnet

and inter-district schools, and attending oversight hearings." *Ibid.* Joshua seeks fees for 1600 hours' work by Mr. Walker here. This represents approximately 60% of the total fee request for Mr. Walker's time. Ms. Springer, for her part, attended many case-related meetings with school officials, parents, and State officials. There were many school visits. Much time was spent with parents, sorting transfer issues arising from the inter-district magnet schools and M-to-M transfers. She reviewed the Department of Education's monthly project management tool. She began attending Magnet Review Committee meetings after Ms. Jackson become too ill to attend. Putting aside Ms. Springer's work on specific areas already covered, Joshua requests approximately 2900 hours for her monitoring. Finally, Joshua requests 336 hours for the late Evelyn Jackson's work on the Magnet Review Committee—preparing for the monthly meetings, attending them, and keeping Mr. Walker updated. Joshua has waived any fee for the approximately 400 hours of time spent by four other monitors over the years.

Precedent authorizes fees for monitoring the remedy. The State initially argues to the contrary, *№ 5046 at 26*, citing *Buckhannon Board*. But the Court of Appeals has recognized that *Buckhannon* doesn't go that far. "A district

court may award fees to a prevailing party for reasonable post-judgment monitoring." *Cody v. Hillard*, 304 F.3d 767, 773–74 (8th Cir. 2002) (analyzing and applying *Buckhannon*). The governing law, as the State recognized in its last brief, is well summarized in the *Jenkins* case. Post-judgment monitoring is compensable if the requesting party prevailed. And the work must be useful, as well as the kind of effort ordinarily necessary to secure the result obtained in the underlying litigation. Redundant, inefficient, or unnecessary work isn't compensable. *Jenkins*, 127 F.3d at 716–18.

Joshua prevailed. It did so in the 1989 settlement. The entitlement to monitoring-based fees comes primarily from that document, the parties' original agreement. And Joshua's prevailing-party status was confirmed in the parties' 2013 agreement. So the law's initial requirement is met. A reasonable fee for Joshua's monitoring comes down, then, to what exactly was done and why—the work's connection to the State and its remedial obligations.

Answering those questions takes the Court back to the record-keeping problem. The Court doesn't doubt Mr. Walker's decades of commendable service in this case. But his estimate of State-related monitoring time is

candidly general and unsupported by sufficient details. The twenty-one-year look back makes it extraordinarily difficult, without the benefit of contemporaneous records, to say exactly what was done. Ms. Springer has attempted to reconstruct her monitoring time. She's submitted an affidavit and a supplemental affidavit. As the State has demonstrated with many specifics, though, Ms. Springer's reconstructed time is imperfect. The Court appreciates her attempts; but the task is just too big to accomplish belatedly with accuracy. Like any prevailing party in a civil rights case who seeks fees, Joshua must prove its lawyers' work by a preponderance of the evidence. *Hensley*, 461 U.S. at 433. The record-keeping problem doesn't justify a zero fee award for this area. Much useful monitoring of the State undoubtedly occurred. But "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly[,]" and this Court must do so on monitoring. *Ibid.*

The Court has considered other circumstances. First, time has already been approved for Joshua's litigating about the State's monitoring in the 1990s. Second, the Office of Desegregation Monitoring played a large role in this case. Its name tells. Its scrutiny was directed primarily at the three

districts. As Joshua highlights, however, the ODM was pointedly critical of the State's omissions too. Third, the State didn't comply with the Allen Letter and fulfill its monitoring obligations. Joshua is right: it had to fill this gap. Fourth, Joshua played a vigilant and important role in implementing the intra-district remedy. It was the contact point on M-to-M transfers and the stipulation magnet schools. Joshua's work (mostly through Ms. Springer) with the districts helped make sure the remedy was real, year-in and year-out. Last, everything in this case is somewhat connected with everything else. Joshua's monitoring work involved the districts and the State. It's hard to draw lines, apportioning Joshua's efforts solely to a district, the three districts, or the State. Truth be told, it was almost all of a piece. There's overlap.

The Court approves the following for Joshua's monitoring: 640 hours of Mr. Walker's time; 1160 hours of Ms. Springer's time; and 154 hours of Ms. Jackson's time. These amounts reflect an approximately 60% discount in the amounts requested. The reductions account for the deficient time records, plus the lack of complete success, as well as the overlap problem. Without more particulars, the Court can't conclude that all the requested time was for needed work. The reduced time adequately captures the State-specific tasks

that Ms. Springer documented. Ms. Jackson's and Ms. Springer's important work on the Magnet Review Committee, however, exemplifies the overlap problem. Representatives from the three school districts, the State, and Joshua comprised the Committee. It was a collaboration required by the 1989 settlement. The State is therefore reasonably charged with fees for only part of Joshua's participation because the three districts were partners in the inter-district remedy. The same equitable principle applies generally to Ms. Springer's work: many of her State-directed monitoring efforts, for example, on transfers, also involved the districts. The reduced award for Ms. Springer's time also reflects the many defects in her reconstructed time records. An example: The time requested for reviewing the Department's project management tool, a cumulative document, is simply excessive. All material things considered, the Court concludes that these reduced amounts represent a reasonable fee for Joshua's monitoring efforts involving the State since 1993.

• Multiplier

Joshua seeks a lodestar fee (hours x hourly rate) of approximately $1,900,000. *№ 5031 at 14.* Joshua also asks the Court to apply a multiplier, which would result in the total fee requested of approximately $3,300,000. *№*

5031 at 26. The Court has approved a lodestar fee of $785,355—based on reductions in both time spent and hourly rates. Joshua has not overcome the strong presumption that the lodestar is a fair and reasonable amount, which accomplishes § 1988(b)'s purpose of making sure plaintiffs like the Joshua Intervenors have good lawyers. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010); *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563–66 (1986). This case is like none other in this Court. And Joshua's lawyers—especially Mr. Walker—have done an exceptionally good job for their clients. They've done so in the face of much public criticism. They've forgone other work. The recent settlement was a good result for Joshua. But none of the circumstances argued convinces the Court that a multiplier is justified. Joshua's lawyers have, over the years, been paid several million dollars. *№ 5066 at 2–3.* They've deserved that compensation—the workman is worthy of his hire. $785,355 more is a reasonable fee for Joshua's State-related work since 1993.

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Joshua's motion for attorney's fees, *№ 5030*, is granted in part and denied in part.

So Ordered.

D.P. Marshall Jr.
United States District Judge

2 April 2015

Appendix

	HOURS				
WORK	**Walker**	**Pressman**	**Porter**	**Springer**	**Jackson**
State Monitoring Litigation	110	11		150	
Loss Funding/Worker's Compensation Litigation	170			40	
Jacksonville Splinter Litigation	225			20	
PCSSD Unitary Status Litigation	110	98	32	56	
State's Motion for Release/2014 Settlement	335	250		270	
Monitoring	640			1160	154
Total Time	1590	359	32	1696	154

Mr. John Walker	1590	hrs.	X	$325	=	$516,750
Mr. Robert Pressman	358	hrs.	X	$275	=	$98,725
Mr. Austin Porter	32	hrs.	X	$250	=	$8,000
Ms. Joy Springer	1696	hrs.	X	$90	=	$152,640
Ms. Evelyn Jackson	154	hrs.	X	$60	=	$9,240
				Total	=	$785,355